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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,035	07/25/2003	Mohammad Farooque	B429-058	3713
26278	7590	09/27/2004	EXAMINER	
COWAN LIEBOWITZ & LATMAN, P.C			KALAFUT, STEPHEN J	
JOHN J TORRENTE				
1133 AVENUE OF THE AMERICAS			ART UNIT	
1133 AVENUE OF THE AMERICAS			PAPER NUMBER	
NEW YORK, NY 10036			1745	

DATE MAILED: 09/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/627,035

Applicant(s)

FAROOQUE ET AL.

Examiner

Stephen J. Kalafut

Art Unit

1745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-72 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,34-39 and 44 is/are rejected.
- 7) ☒ Claim(s) 2-33,40-43 and 45-72 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/20/2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 34-36 are rejected under 35 U.S.C. 102(a) and (e) as being anticipated by Murakami *et al.* (US 6,607,830).

Murakami *et al.* disclose a gasket (6), which includes an internal metal shim (6b) between layers (6c) of rubber. This would be a gasket in which a resilient shim is disposed within sections thereof, the term “preselected sections” encompassing the entire area of the gasket. Recitations of intended use, such as for a fuel cell, do not distinguish in these claims, which are drawn to the gasket *per se*. The metal shim, and the overall gasket, includes a corrugated “bead portion” (6a), which would be a resilient section extending outwardly from the plain of the shim.

Claims 1 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by either Adams (US 4,049,856), Saito (US 5,154,977) or Inciong (US 5,687,975).

Adams discloses a gasket (5), which includes an internal metal shim (11) between layers (10) of a composite of asbestos and rubber (column 2, lines 48-60). This would be a gasket in which a resilient shim is disposed within sections thereof.

Saito discloses a gasket, which includes an internal metal shim (11) between layers of iron phosphate (12), chromium (13), epoxy primer (14), vulcanized rubber (15), and graphite (16). See column 3, line 1 through column 4, line 2. The layers of metal, iron phosphate and chromium would be a resilient shim. The layers of epoxy and rubber would be portions having different compressibilities, since they are different materials.

Inciong discloses a gasket (10), which includes an internal shim (28), which may be made of metal or plastic (column 2, lines 36-40). This would be a gasket in which a resilient shim is disposed within sections thereof.

Regarding all three references, the term “preselected sections” would encompass the entire area of the gasket. Recitations of intended use, such as for a fuel cell, do not distinguish in these claims, which are drawn to the gasket *per se*.

Claims 1 and 34-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Gallo *et al.* (US 5,362,074).

Gallo *et al.* disclose a gasket (20), which includes a central metal shim (26), between two facing layers (28). Attached to the shim are pieces of metal (34) which includes tangs (48) disposed at angles to the plain of the shim. While Gallo *et al.* identify the planar member (26) as a shim, the combination of this member and the metal parts (34) may also be seen as a shim, as disclosed herein. The tangs (48) would be sections that are cut out, extend outwards from the plain of the shim, and provide resiliency. The metal parts (34) are spaced along the shim (26), on both sides thereof, which would fall into the present recitation that the one side of each section on the same side thereof. This is done on each side of the shim body (26). The term

“preselected sections” would encompass the entire area of the gasket. Recitations of intended use, such as for a fuel cell, do not distinguish in these claims, drawn to the gasket *per se*.

Claims 1 and 44 are rejected under 35 U.S.C. 102(e) as being anticipated by Krasij *et al.* (US 6,660,422).

Krasij *et al.* disclose a fuel cell with a gasket around the periphery of a manifold (10). The manifold may be joined to the fuel cell via the combination of a rubber strip (20) and a silicone rubber seal (15a). These are two different materials, and would thus have different compressibilities. Thus, the gasket includes two components with different compressibilities.

Claims 2-33, 40-43 and 45-72 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art, cited either herein or by applicants, does not disclose a gasket with different peripheral portions having different compressibilities, or with an internal shim including an outer wrap; or a fuel cell having a gasket either with different peripheral portions having different compressibilities, or with an internal shim.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Li *et al.* (US 6,514,636) disclose a fuel cell with a manifold joined thereto, via a gasket and a layer of dielectric material. Matsumura *et al.* (US 4,794,055) and Singelyn *et al.* (US 4,774,154) disclose fuel cells with various manifold seals.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Kalafut whose telephone number is 571-272-1286. The examiner can normally be reached on Mon-Fri 8:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sjk


STEPHEN KALAFUT
PRIMARY EXAMINER
GROUP 1700